

William R. Ellis

From: Peter M. Burrell
Sent: Friday, April 16, 2004 5:54 PM
To: 'Michael Roberts'
Subject: RE: Cindy said you still haven't received this . . .

Mike --

As I told you this morning, our offer was take it or try it. So we will see you on Monday morning.

It's unlikely the 6th Circuit will change Ohio law on bad faith without reference to the Ohio Supreme Court.

By the way, have you had any other ex parte communications with the judge's law clerk about which we were unaware?

Pete

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-----Original Message-----

From: Michael Roberts [mailto:mroberts@Graydon.com]
Sent: Friday, April 16, 2004 5:03 PM
To: Peter M. Burrell; William R. Ellis
Cc: Michael Roberts
Subject: Cindy said you still haven't received this . . .

Pete

Attached is my motion in limine to exclude the new videos (the exhibits to the motion are also attached). I'm having it filed with a copy of the videos for Pat Smith to review over the weekend. I suspect trial will be delayed slightly Monday morning so the Court can review them. I must say though - that the videos show nothing and only make CLIC look desperate - so I struggled with asking that they be kept out. But I thought - while I'm on a roll why let you guys have any evidence at trial? Finally, as you can see, 6th circuit case law supports the exclusion of the material even if you would have produced it like an honorable lawyer.

Also, let's assume Bill Ellis is wrong again about the outcome of the Appeal - have you thought what impact there may be on DMS' business if the 6th Circuit affirms a Bad Faith verdict when benefits are being paid under reservation of rights? I can't imagine you want to make that law for them.

Let's agree to the \$ and you can keep the financials.

Mike

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